

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5071 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

MHESHKUMAR VITHALDAS PANCHAL

Versus

GITABEN @ GOMTIBEN CHIMANLAL

Appearance:

MR NIGAM R SHUKLA for Petitioners
MR SHAH FOR MR VIJAY H PATEL for Respondent No. 1
MR RAVAL, APP, for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/07/1999

ORAL JUDGEMENT

1. Heard Mr. Nigam Shukla for the petitioner and Mr.
Jayesh Shah for respondent No.1 and Mr. Raval, learned
Additional Public Prosecutor for respondent No.1.

2. Rule. Mr. Shah and Mr. Raval waive service of
Rule on behalf of respondents No.1 and 2 respectively.

3. The petitioners herein challenges the order passed by learned Metropolitan Magistrate, 15th Court, Ahmedabad, in an application under Section 117 of the Code of Criminal Procedure tendered by the petitioners, who are accused in Criminal Case No.116 of 1996, objecting to the jurisdiction of the learned Metropolitan Magistrate. The learned Metropolitan Magistrate, after hearing both the sides, held that he had jurisdiction and he, therefore, dismissed the application. This has given rise to the present petition.

4. The facts in nutshell are that petitioner No.1-Maheshkumar Vithaldas Panchal was married to respondent No.1. Petitioner No.2 is his mother, petitioner No.3 is his brother and petitioner No.4 is his sister. Respondent No.1 lodged complaint before the learned Metropolitan Magistrate against the petitioners alleging offences punishable under Sections 498A, 323, 504, 506(2) and 114 of the Indian Penal Code. Therein the petitioners raised the objection about jurisdiction on the ground that all the offences alleged in the complaint have undisputedly occurred at Chanasma and, therefore, the learned Metropolitan Magistrate, Ahmedabad, will have no jurisdiction to try the complaint. The learned Magistrate did not accept the say of the petitioners on the ground that, although the offences have occurred at Chanasma, the lady is forced into staying at her parents' house which would cause cruelty as contemplated under Section 498A of Indian Penal Code. He has drawn support from decision of the Rajasthan High Court, in the case of Jagdish & Ors. v. State of Rajasthan, as reported in 1998 Criminal Law Journal, 554.

5. Mr. Nigam Shukla submitted that the learned Magistrate committed an error in holding that it is a continuous offence and, therefore, he will also have jurisdiction because the complainant - respondent No.1 herein - is staying at her parents' house, in Ahmedabad. Mr. Shukla pressed into service decision of this High Court rendered in the case between Upendrasinh Achalsinh Rajput & Ors. v. State of Gujarat, as reported in 38(1) GLR 504 and the decision of the Apex Court rendered in the case between Sujata Mukherjee v. Prashant Kumar Mukherjee, as reported in (1997) 5 SCC 30 and urged that the facts of the present case are very similar to the facts of the case decided by this High Court earlier wherein it was held that only the Magistrate in whose territorial jurisdiction the offences are alleged to have been committed will have jurisdiction to try the offence.

He, therefore, urged that the order impugned herein may be quashed and the learned Metropolitan Magistrate may be directed to return the complaint to the complainant for it being presented before the learned Judicial Magistrate, First Class, at Chanasma.

6. Mr. Shah, learned advocate for respondent No.1 has strongly opposed this petition. According to him, this case has a continuing offence and, therefore, the order in question cannot be said to be erroneous. According to him, a lady is forced into staying at her parents' place and that in itself is a cruelty. She has been forced to stay at her parents' place after nine years of married life and, therefore, it would be a continuing offence as she would suffer till she has not been able to go back to her matrimonial house.

7. After going through the complaint, without entering into the merits of the matter, it is found that the allegations are made in respect of incidents which have occurred at Chanasma. It is not the complainant's case that any of the incident has occurred at Ahmedabad after her reaching her parents' house. The averments do not speak of any continuing sufferings as argued and accepted by the learned Magistrate. At this stage, when evidence yet to be led and trial is yet to begin, this Court has to proceed on the pleadings and averments made in the complaint and, in absence of any such averment, it would not be proper to accept the argument advanced by Mr. Shah on behalf of the original complainant and accepted by the learned Magistrate. The learned Metropolitan Magistrate slipped into an error in accepting that argument.

8. In the case of Sujata Mukherjee (*supra*) before the Apex Court, the facts were slightly different because in that case, after the wife reaching her parents' house, the husband went to that house and assaulted her and, therefore, it was held that, that Court also will have jurisdiction.

9. In the case of Upendrasinh Achalsinh Rajput (*supra*) decided by this Court earlier, the question of cruelty was also considered and it was held that the Magistrate in whose territorial jurisdiction the incidents are alleged to have occurred will have jurisdiction and, therefore, the complaint be directed to be returned to the complainant for it being produced before that Magistrate.

10. In this view of the matter, the petition deserves

to be allowed. The order of the learned Metropolitan Magistrate impugned herein, rejecting the application of the petitioners dated 29th May, 1998 is hereby quashed and set aside. The learned Metropolitan Magistrate, 15th Court, Ahmedabad, is directed to return to the complaint of Criminal Case No.116 of 1996 to the complainant for it being produced before the learned Judicial Magistrate, First Class, at Chanasma. Rule lis made absolute accordingly.

[A. L. DAVE, J.]

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